



**PUBLIC WORKS DIVISION
OPERATIONS AND MAINTENANCE
DEPARTMENT**

2400 Broadway SE Albuquerque, NM 87102

-POLICY-

Landscaping or Natural Frontage and Driveways in the Public Rights of Way

**Property Owner Rights and Responsibilities Per the Bernalillo County Code Section 38,
Section 66 and the Bernalillo County Street Standards**

This policy will identify the conditions by which private properties are allowed or required to make improvements or connections from private property into public rights of way. [Related Chapters in the County Code, Chapter 38 – Floods, Chapter 66 - Roads and Bridges, and the County Street Standards.]

The **set back area** is that portion of land along the road between the private property line and the edge of the paved road or curb. It is within the public right-of-way to aid private property's ability to use public facilities and to provide regulated traffic control, public road drainage, and official public functions to both the motoring public and the adjoining properties, such as mail delivery. Each driveway, shrub, landscaping boulder, patch of weeds or other item in the setback area represents a point of potential traffic conflict or disruption to the function of the setback.

The Public Works Division , cannot publicly maintain private property by State law. Driveways and landscaping are considered to be privately held structures. (This memo does not cover sidewalk repair responsibilities, call Public Works 848-1500 for more information about sidewalk policies)

The absence of a sidewalk does not relieve the County nor the adjoining property owner of the responsibility to allow safe passage of pedestrians.

Maintenance:

The Operations and Maintenance Department will respond to requests for functional, shoulder, drainage ditch or borrow ditch mowing, grading, and/or clearing both up and down stream from private driveways. The width of this service ranges from 0' to 7' from the edge of the road, and corresponds to AASHTO Standards in the Roadside Design Guide, referred to by the Street Standards which provide for a "Clear Zone" for traffic safety. The Operations and Maintenance Department, road maintenance dispatch line is 848-1503. Maintenance of Decorative landscaping or removal of weeds or trash against a property fence, or maintenance of the driveway condition within the right of way is the adjoining property owner's duty and responsibility as shown on the following pages.

In addition the throwing of greenwaste or other debris into the setback area is technically defined as illegal dumping and carries a possible \$1000 fine and/or imprisonment. Yard waste and refuse must be properly disposed. The Solid Waste Department (224-1639) can give information about free and low cost refuse deposit locations and free curbside appliance removal services.

Fences, Walls, Footings And Encroachments

Absent a written agreement with the County to the contrary, in multi-family residential, commercial and industrial developments, walls, footings, fences, and encroachments are not permitted within the right-of-way, and in new residential subdivisions, walls, footings, fences and encroachments shall not be permitted in the right-of-way.

Note: In rare instances encroachment agreements are possible, if approved by the County. Such agreements generally provide that the applicant must remove the encroachment within a specific time upon notification by the County for any reason, and make the applicant responsible for indemnifying the County from any negligent actions by the applicant. There are fees for renting the right of way, processing the application and recording the agreement.

For pre-1980's installations:

"Walls or fences over 3' in height will not be approved within the right-of-way if the wall or fence will be less than 9' from face of curb on local streets and less than 10' from face of curb on arterial and collector streets. All walls or fences over 3' in height and within the right-of way must be field checked by the County Engineer prior to approval. Any walls or fences which are within the clear sight triangle are restricted to a height of 3' measured from the flow line of the gutter."

Drainage:

Code Section 66-211. Drainage Ditch (borrow ditch) means a ditch parallel to the driving surface to convey rainwater runoff from the right-of-way. Where no curb or sidewalk exists, driveway construction shall not block the drainage ditch without providing proper drainage structures. (See Driveway Culvert Policy Memo for more details)

Note: Where no drainage plan exists, builders and property owners bear the burden and liability for assuring that their landscaping improvements are installed properly, and not adversely affecting their neighbors, the County and/or the proper functioning of the roads, drainage, and or trails.

Excavation Traffic Control, or Paving Permits are issued by the County to insure that hazards, or blockage of planned facilities are not impeded, and that work within the right-of-way is by licensed, insured individuals or companies. The County does not perform design verification for private landscaping.

Definitions (from the Code):

“Setback area (or Sidewalk Setback area) means the part of the public right-of-way which is not occupied or planned to be occupied by street, curb, gutter or sidewalk”

Note: All setback areas are the same regardless of whether a sidewalk exists, is planned or is not planned to exist.

“Street furniture means any above grade appurtenance placed within the public right-of-way for the general convenience and use of the public such as, but not limited to, benches, litter baskets, utility poles, streetlights, traffic control devices, mailboxes, telephones, fire hydrants, etc.”

“Sidewalk means that portion of the public right-of-way which is primarily devoted to pedestrian use.”

Intent and purpose of article (from the Access Code):

“This article is hereby declared to be remedial and is intended to secure the following objectives:

1. Provisions for safe and efficient driveway accesses, drive pads and street drainage;
2. Provisions for the necessary separation between pedestrians and vehicles, utilities and street furniture;
3. Provisions for safe, convenient and unobstructed paths for pedestrians;
4. Clear delineation and protection of the public right-of-way;
5. Authorization to permit property owners to engage their own licensed contractors to construct driveways and sidewalks so long as the requirements of this and other applicable ordinances and standards are met.
6. Sidewalk maintenance”

Special Improvement Districts

"The provisions of the sidewalk ordinance shall in no way preclude the county from establishing sidewalk improvement districts as may be provided or by law. The design and construction of sidewalks, built-in sidewalks, and/or street improvement districts shall be done in accordance

with the provisions of the sidewalk ordinance and other applicable laws, ordinances and rules as shall all other sidewalks constructed by public agencies.”

Setback area use

The setback area may be used for the following public purposes so long as such uses are not in conflict with the provisions of this article or any other applicable ordinance:

1. Street furniture
2. Public and private utility distribution systems
3. Planting of trees and/or other suitable types of vegetation, as described in the County Code – Chapter 66 - Section 66-223(a)(6).
4. Decorative paving or other ground cover not intended for vehicular use
5. Driveway and/or driveway access.
6. Bicycle trails.
7. Drainage or borrow ditches.
8. Mailboxes.
9. Traffic control devices.

- (c) **“The setback area and all plantings therein shall be maintained by the owner, occupant or agents in charge of the adjoining property”.**
- (f) When the county engineer determines that there is or has been a violation of this section, the county may cause a notice to be served upon the owners, occupants or agents in charge of the property or street furniture adjoining the sidewalk or sidewalk setback area directing that repair, maintenance or removal of obstructions are made at the cost and expense of such owners, occupants or agents in charge of the property or street furniture. If such repair, maintenance or removal of obstructions is not attained within 60 days of such notice, the county may make necessary repairs, maintenance or removal of the obstructions. The cost of such repairs or maintenance or removal of the obstruction shall constitute a lien in favor of the County against such adjacent, real property and shall be foreclosed in the same manner provided by law for the foreclosure of municipal liens.
- (g) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or any part thereof. It shall be unlawful for any person to hide or obscure any official traffic control device, railroad sign or signal by the erection of any object , or by allowing bushes, hedges, trees or other vegetation to grow and obscure the same.
- (h) Unobstructed vision for traffic safety shall be strictly and solely maintained by the property owner and occupant on all corner lots, regardless of zone classification, with reference to any vehicle, trailer, sign, fence, ornament, hedge, shrub, tree, display or any other obstruction, but not including buildings. No such obstruction to view between three and eight feet above the gutter line shall be placed or maintained within the clear sight triangle which is a triangle area at the street corner, which area is bounded by and whichever is lesser of:

1. The curblines of a street intersection and a line extended to the curblines connecting points on the property lines 25 feet distant from the intersection of the property lines of the corner lot in such street intersection; or
 2. The curblines of an intersection and line connecting points 35 feet distant from the corner of the intersection and such corner is determined by projecting the curblines out to a specified point.
- (i) Any owner, occupant or agent in charge of all corner lots failing to comply with the provisions of subsections (g), (h) and (I) of this section, shall be liable to the county for any claim or demand made upon the county which arises from, either directly or indirectly, the erection of, or failure to maintain, any vehicle, trailer, sign, fence, ornament, hedge, shrub, tree or display which obstructs the clear sight triangle, or which hides or obscures any traffic control device, railroad sign or signal.

Section 66-227. non-conforming:

- (2) All curb cuts on designated roadways, which are determined by the Public Works Division to constitute a traffic hazard, and which become nonconforming upon March 12, 1996, shall be subject to revocation. [No “grandfathered” accesses after 3-12-96]

Sidewalk repair and maintenance:

- (a) All sidewalks shall be kept clean from rocks and other obstructions, including ice and snow, and in a state of good repair by the owner, occupants or agents in charge of the adjoining property. A sidewalk in good repair shall be free of cracks, floats, obstructions, depressions and/or any other defects and shall have a uniform longitudinal and transverse gradient.
- (b) All areas directly over sidewalks to a height of eight feet shall be maintained free of vegetation or other obstructions by the owners, occupants or agents in charge of the adjoining property.
- (c) The sidewalk setback area and all plantings therein shall be maintained by the owners, occupants or agents in charge of the adjoining property.
- (d) No item of street furniture or other item which would obstruct or effectively reduce the width of a sidewalk below the dimensions established in the County Sidewalk Standards attached to Ord. No. 96-2 may be placed in, on, over, or under the sidewalk unless a variance allowing such item is obtained from the county engineer.
- (e) Any owner, occupant, or agent in charge of adjoining property or street furniture shall be liable to the county for any claim or demand made upon the county which arises from a direct or indirect violation of this article by the owner, occupant, or agent in charge of adjoining property or street furniture and shall hold the county harmless and indemnify the county for any such claim or demand.

- (f) When the county engineer determines that there is or has been a violation of this section, the county may cause a notice to be served upon the owners, occupants or agents in charge of the property or street furniture adjoining the sidewalk or sidewalk setback area directing that repair, maintenance or removal of obstructions are made at the cost and expense of such owners, occupants or agents in charge of the property or street furniture. If such repair, maintenance or removal of obstructions is not attained within 60 days of such notice, the county may make the necessary repairs, maintenance or removal of obstructions. The cost of such repairs or maintenance or removal of the obstruction shall constitute a lien in favor of the County against such adjacent, real property and shall be foreclosed in the same manner provided by law for the foreclosure of municipal liens.
- (g) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or signal or any part thereof. It shall be unlawful for any person to hide or obscure any official traffic control device, railroad sign or signal by the erection of any object, or by allowing bushes, hedges, trees or other vegetation to grow and obscure the same.
- (h) Unobstructed vision for traffic safety shall be strictly and solely maintained by the property owner and occupant on all corner lots, regardless of the zone classification, with reference to any vehicle, trailer, sign, fence, ornament, hedge, shrub, tree, display or any other obstruction, but not including buildings. No such obstruction to view between three and eight feet above the gutter line shall be placed or maintained within the clear sight triangle which is a triangular area at the street corner, which area is bounded by and whichever is the lesser of:
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 - (2) The curblines of an intersection and line connecting points 35 feet distant from the corner of the intersection and such corner is determined by projecting the curblines out to a specified point.
- (i) Any owner, occupant or agent in charge of all corner lots failing to comply with the provisions of subsections (g), (h) and (i) of this section, shall be liable to the county for any claim or demand made upon the county which arises from, either directly or indirectly, the erection of, or failure to maintain, any vehicle, trailer, sign, fence, ornament, hedge, shrub, tree or display which obstructs the clear sight triangle, or which hides or obscures any official traffic control device, railroad sign or signal.

Enforcement

Both the access and drainage sections of the Code provide for notification of non-compliance, an allowance for reasonable corrective time and possible repairs by the County if the property owner does not remedy. Both codes provide for liens against the property for repairs made by the County.

Cooperation with County and County Ownership

Landscaping or driveways installed without coordination with a County review engineer or that do not have approved hydraulic or traffic design, are subject to replacement by their owners at their expense if a problem is demonstrated. Landscaping in the setback can be beneficial for both County operations and the property owner when performed properly. The County is ultimately the owner of the underlying property, for dedicated rights-of-way and as such exercises the final discretion for any items located on its property. The County may summarily remove or alter the right of way at any time without notice. Generally a courtesy notice will be provided for substantial alterations.

Special Common Sense Note for North Albuquerque Acres and other undeveloped subdivisions

If you are building one of the first homes in a predominantly undeveloped area, it is inadvisable to landscape the setback in front of your house. The County or subsequent neighbors are not obligated to preserve that landscaping when utilities are extended to the next new homes that will be built.

The North Albuquerque Acres Transportation Plan originally adopted in 1998, calls for the eventual installation of paved trails and unpaved pathways lining all of the roadway shoulders, so extensive landscaping could be impacted in the future.